

STATE OF OKLAHOMA
DEPARTMENT OF SECURITIES
FIRST NATIONAL CENTER
120 N. ROBINSON, SUITE 860
OKLAHOMA CITY, OKLAHOMA 73102



In the Matter of :

TARGET OIL AND GAS CORPORATION,
MICHAEL DALE SMITH and JAMES PAUL MCELROY

RESPONDENTS.

ODS File No. 04-082

RESPONSE TO DIVISION RECOMMENDATION and
REQUEST FOR A HEARING

COME NOW THE RESPONDENTS, Target Oil and Gas Corporation and Michael Dale Smith, individually, and in his capacity as President of Target Oil and Gas Corporation, and for their Response to the Department's Recommendation state as follows:

Respondents request a hearing as provided for by the Oklahoma Securities Act (Predecessor Act) and the Oklahoma Uniform Securities Act of 2004.

RESPONSE

In response to the allegations contained in the Findings of Fact of the Enforcement Recommendation, Respondents states as follows:

1. It is admitted that Target Oil and Gas Corporation is and was a Kentucky corporation engaged in the business of oil and gas exploration.
2. It is admitted that Michael Dale Smith is and was the President of Target Oil and Gas Corporation.

3. It is denied that James Paul McElroy was a duly elected Vice-President of Target Oil and Gas Corporation. Mr. McElroy was an employee of Target Oil and Gas Corporation during the relevant period.
4. Respondents are without sufficient information to form a belief as to the truth or falsity of the allegations and therefore deny same, but admit that in its history, Target Oil and Gas Corporation has allowed accredited investors, as defined by the SEC, representing themselves to be from the State of Oklahoma, to invest in private placement offerings.
5. Michael Dale Smith admits that he is not registered under the Predecessor Act to Transact business as a broker dealer or agent, but claims the securities offered by Respondent corporation are done so pursuant to an exemption from registration under 17 CFR 230.506, otherwise known as Regulation D Rule 506. Securities offered pursuant to said Rule 506 qualify as "covered securities" under 15 U.S.C. § 77r(b)(4)(D). The National Securities Markets Improvement Act of 1996 (NSMIA) preempts regulation of covered securities by any state. Section 18(a) of the Act (15 U.S.C. § 77r(a)) provides in part:

Except as otherwise provided in this section, no law . . . of any State . . .

(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that---

(A) is a covered security; or

(B) will be a covered security upon completion of the transaction;

...

(3) shall directly or indirectly prohibit, limit, or impose conditions based on the merits of such offering or issue, upon the offer or sale of any security described in paragraph (1).

6. Respondents admit that the subscription Agreements offered and sold were not registered under the Predecessor Act, but Respondent claims the securities offered by Respondent corporation are done so pursuant to an exemption from registration under 17 CFR 230.506, otherwise known as Regulation D Rule 506. Securities offered pursuant to said Rule 506 qualify as "covered securities" under 15 U.S.C. § 77r(b)(4)(D). The National Securities Markets Improvement Act of 1996 (NSMIA) preempts regulation of covered securities by any state. Section 18(a) of the Act (15 U.S.C. § 77r(a)) provides in part:

Except as otherwise provided in this section, no law . . . of any State . . .

(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that---

(A) is a covered security; or

(B) will be a covered security upon completion of the transaction;

...

(3) shall directly or indirectly prohibit, limit, or impose conditions based on the merits of such offering or issue, upon the offer or sale of any security described in paragraph (1).

WHEREFORE, the Respondents respectfully request as follows:

1. That this matter be set for a hearing;
2. That the Action be dismissed and held for naught;
3. For such other and further relief as the Department deems appropriate.

Respectfully submitted this 8th day of July, 2005.



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Michael Dale Smith
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CERTIFICATE OF SERVICE

This is to certify that this 8th day of July, 2005, a copy of the foregoing was served by delivering a true and exact copy via hand-delivery to:

Oklahoma Department of Securities
Attn: Patricia A. Labarthe, Enforcement Attorney
120 North Robinson, Suite 860
Oklahoma City, OK 73102



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